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MREC

SETTLEMENT AGREEMENT  
BETWEEN  
MISSOURI REAL ESTATE COMMISSION  
AND  
KENNETH L. RUCK

Kenneth L. Ruck (Ruck) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Ruck's license as a broker officer, no. 1999021390, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2012. The MREC and Ruck jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Ruck acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Ruck may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Ruck knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Ruck acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Ruck stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Ruck's license as a broker officer, license no. 1999021390, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter

621, RSMo, and §§ 339.010 to 339.205 and §§ 339.710 to 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Ruck in Part II herein is based only on the agreement set out in Part I herein. Ruck understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Ruck herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo Supp. 2012, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.205 and §§ 339.710 to 339.855, RSMo (as amended), relating to real estate salespersons and brokers.

2. Ruck holds an active license as a broker officer, no. 1999021390. Ruck's license was first issued by the MREC on February 23, 1995, and is set to expire on June 30, 2014.

3. On or about January 31, 1990, Ruck pled guilty to driving with excessive blood alcohol content in the Associate Circuit Court of Franklin County.

4. On or about January 5, 1994, Ruck pled guilty to driving while intoxicated in the Circuit Court of Franklin County.

5. On or about April 7, 1994, Ruck pled guilty to driving while intoxicated in the Associate Circuit Court of Franklin County.

6. On or about March 27, 1997, in the Circuit Court of St. Louis County (case number 2196R-05521-01), Ruck pled guilty to the class D felony of driving while intoxicated, persistent offender, a violation of § 577.010, RSMo. The court ordered three years' incarceration with a suspended execution of that sentence, 120 days' shock incarceration pursuant to § 559.115, RSMo, and five years' supervised probation. On or about November 6, 2002, the court issued an order revoking Rusk's probation and executed the above sentence of incarceration with credit for time served.

7. On or about March 27, 1997, in the Circuit Court of St. Louis County (case number 2196R-05521-01), Ruck pled guilty to the class A misdemeanor of carelessly and imprudently operating a vehicle. The court ordered 60 days' incarceration pursuant to § 559.115, RSMo, and 30 days' shock incarceration.

8. On or about December 27, 1999, in the Circuit Court of Franklin County, Ruck pled guilty to the class B misdemeanor of driving while intoxicated, a violation of § 577.010, RSMo (case number 20CR03990458). The court suspended imposition of sentence and ordered five years' supervised probation. Ruck's probation was subsequently revoked on November 7, 2003, and the court ordered five years' incarceration, suspended execution of the sentence, and 120 days' shock incarceration with credit for time served.

9. On or about May 27, 2003, in the Circuit Court of Franklin County, Ruck pled guilty to the class D felony of driving while intoxicated, persistent offender, a violation of § 577.010, RSMo (case number 02CR330221-01). The court ordered five years' incarceration, suspended execution of the sentence, and ordered five years' supervised probation.

10. On or about February 24, 1995, the MREC received an application for licensure as a broker officer from Ruck ("Original Application") on which Ruck checked "No" to the following question:

6-12. Have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under chapter 339, RSMo, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed? If yes,

provide the date, offense, court location and case number.

11. Ruck did not disclose any of the above guilty pleas on his applications for renewal of his broker-officer license, although he was required to do so.

12. Section 339.040, RSMo Supp. 2012, provides in relevant part as follows:

1. Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

13. Section 339.050, RSMo Supp. 2012, provides as follows:

Applications for licenses shall be in writing, on blanks furnished by the commission, accompanied by such information and recommendations as it may require. Each application shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same,

subject to the penalties of making a false affidavit or declaration.

14. Ruck's failure to report the guilty pleas on his Original Application or Renewal Applications provides cause for discipline pursuant to § 339.100.2(15), RSMo Supp. 2012, as he failed to provide information required by the application in violation of § 339.050, RSMo.

15. Ruck's failure to report the guilty pleas on his Original Application or Renewal Applications provides cause for discipline pursuant to § 339.100.2(16), RSMo Supp. 2012, as it fails to demonstrate 1) good moral character, 2) a good reputation for honesty, integrity, and fair dealing, and/or 3) competence to transact the business of a broker in such a manner as to safeguard the interest of the public.

16. Ruck's guilty pleas provide cause for discipline pursuant to § 339.100.2(18), RSMo Supp. 2012, as he pled guilty to offenses reasonably related to the qualifications, functions or duties of any profession licensed or regulated under Chapter 339. Further, an essential element of the offenses was fraud, dishonesty, and/or an act of violence, and the offenses involved moral turpitude.

17. Ruck's failure to 1) report the guilty pleas on his Original Application or Renewal Applications and 2) repeated violations of Missouri law, as described above, provides cause for discipline pursuant to

§ 339.100.2(19), RSMo Supp. 2012, as it constitutes untrustworthy, improper or fraudulent business dealings and/or demonstrates bad faith or incompetence, misconduct, and/or gross negligence.

18. Ruck's failure to report the guilty pleas on his Original Application or Renewal Applications provides cause for discipline pursuant to § 339.100.2(25), RSMo Supp. 2012, as he made a material misstatement, representation, or omission with regard to his applications for licensure or license renewal.

## II. Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2012.

12. **Ruck's license is on probation.** Ruck's license as a broker officer is hereby placed on PROBATION for a period of FIVE (5) YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Ruck shall be entitled to practice as a broker officer under §§ 339.010 to 339.205 and §§ 339.710 to 339.855, RSMo, as amended, provided Ruck adheres to all the terms of this agreement.

13. Terms and conditions of the disciplinary period. The terms and conditions of the disciplinary period are as follows:

- A. Quarterly reports: Ruck shall obey and comply with all terms and conditions of probation for his criminal supervision. Ruck shall prepare and submit quarterly written reports to the MREC regarding the status of and compliance with his criminal probation, parole, and/or release, as well as his compliance with the terms and conditions of this settlement agreement. Ruck is responsible for ensuring that such quarterly reports are received by the MREC on or before January 10, April 10, July 10, and October 10 during each year of the disciplinary period. Ruck shall submit the first such report so that the MREC receives it on or before April 10, 2014.
- B. Ruck shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Ruck shall notify the MREC in writing within ten (10) days of any change in this information.
- C. Ruck shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current

and active status. During the disciplinary period, Ruck shall not place his real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Ruck may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Ruck applies for a real estate license after surrender, Ruck shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

- D. Ruck shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.
- E. Ruck shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

F. During the probationary period, Ruck shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

G. Ruck shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Ruck's license as a real estate broker under <sup>339.100.2 R.R. 06</sup> § ~~339.532.2~~, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

H. Broker Acknowledgement. If at any time during the disciplinary period Ruck wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Ruck must obtain the Broker Acknowledgement form from the MREC.

14. Upon the expiration of the disciplinary period, the license of Ruck shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Ruck has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Ruck's license.

15. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

16. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Ruck of §§ 339.010 to 339.205 and §§ 339.710 to 339.855, RSMo, as amended or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

17. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

18. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Ruck agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

19. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

20. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

21. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

22. Ruck, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit

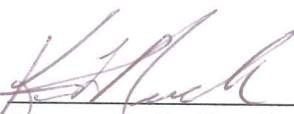
and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

23. Ruck understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Ruck's license. If Ruck desires the Administrative Hearing Commission to review this Settlement Agreement, Ruck may submit his request to:


Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

24. If Ruck requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Ruck's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Ruck as allowed by law. If Ruck does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

  
Kenneth L. Ruck      Date 2/10/14

MISSOURI REAL ESTATE  
COMMISSION

  
Janet Carder, Executive Director  
Date: 2-20-14

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